

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

THE RELIGIOUS SISTERS OF MERCY,
et al.,

Plaintiffs,

v.

No. 3:16-cv-386

SYLVIA BURWELL, Secretary of the
United States Department of Health
and Human Services, *et al.*,

Defendants.

**DEFENDANTS' EXPEDITED, CONSENT MOTION FOR TWO-DAY
EXTENSION OF TIME AND TO EXCEED PAGE LIMITATION**

Defendants respectfully request that the Court grant Defendants a two-day extension of time, from December 5, 2016, to December 7, 2016, to file a brief in response to Plaintiffs' motion for a preliminary injunction, and that the Court grant Defendants leave to file a brief equal in length—*i.e.*, forty pages—to Plaintiffs' brief in support of their motion for a preliminary injunction. Plaintiffs have consented to Defendants' requests.

1. In the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, Congress included a provision prohibiting discrimination on the basis of race, color, national origin, age, sex, and disability in federally financed health care programs and activities. *See* 42 U.S.C. § 18116 ("Section 1557"). The Department of Health and Human Services promulgated a rule implementing Section 1557 on May 18, 2016. *See Nondiscrimination in Health Programs and Activities* (the "Rule"), 81 Fed. Reg. 31,376 (May 18, 2016) (codified at 45 C.F.R. Pt. 92). Plaintiffs filed this action challenging certain aspects of the Rule on November 7, 2016,

see ECF No. 1, and moved for a preliminary injunction on November 17, *see* ECF No. 5. Plaintiffs have requested a ruling on their motion by January 1, 2017. *See* ECF No. 6 at 1, 38.

2. Defendants' current deadline to respond to Plaintiffs' preliminary injunction motion is December 5, 2016. *See* LCvR 7.1(B); Fed. R. Civ. P. 6(d). Defendants respectfully request an additional two days, up to and including December 7, in order to effectively respond to Plaintiffs' forty-page motion, which raises a litany of arguments as to why Plaintiffs believe the challenged aspects of the Rule are unlawful. Defendants further note that their time in which to respond includes the Thanksgiving holiday and that Defendants' counsel also must respond, by November 23, to previously filed preliminary injunction motions in a similar case pending in Texas.¹

3. In addition, Defendants respectfully seek leave file a brief of up to forty pages in response to Plaintiffs' motion. Plaintiffs sought and received leave to file a forty-page brief in support of their motion. *See* ECF Nos. 3, 4.

4. Undersigned counsel for Defendants conferred with undersigned counsel for Plaintiffs, who indicated that Plaintiffs consent to both requests.

5. In light of the approaching December 5, 2016, deadline, Defendants respectfully request that the Court consider this motion on an expedited basis.

Dated: November 21, 2016

Respectfully Submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney
General

JENNIFER D. RICKETTS
Director, Federal Programs Branch

¹ *See Franciscan Alliance, Inc. v. Burwell*, No. 7:16-cv-108 (N.D. Tex. filed Aug. 23, 2016).

SHEILA M. LIEBER
Deputy Director, Federal Programs Branch

/s/ Adam Grogg

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2016, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Adam Grogg
ADAM GROGG